

## **Impunity and the Credibility Gap in Mexico**

Statement of

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Before the Subcommittee on Africa, Global Human Rights and International Operations House  
International Relations Committee

At the hearing on:

An End to Impunity:

Investigating the 1993 Killing of Mexican Archbishop Juan Jesus Posadas Ocampo

April 6, 2006

The Washington Office on Latin America (WOLA) is a non-governmental organization that promotes human rights, democracy and social justice in Latin America and in U.S. foreign policy toward the region.

We have monitored the human rights situation in Mexico for many years, working with colleagues in the Mexican human rights community to seek justice for serious human rights violations that have occurred there.

This work has given WOLA first-hand knowledge about the failures of Mexico's criminal justice system to adequately and credibly solve crimes, whether common delinquency, human rights abuses, or high-profile assassinations.

What we have discovered is that too often Mexico's criminal justice system, rather than solve and punish crimes – quite the contrary – contributes to confusion, cover-up, and impunity through widespread negligence, inefficiency, and abuse. And as a result, Mexico's criminal justice system suffers from an almost absolute lack of credibility – which undermines the system in the rare cases that it is working properly.

The doubts surrounding both the Posadas murder itself and the government's account of how it happened are emblematic of three things:

1. Widespread impunity for high-profile crimes and human rights cases – and lack of credibility in the government's investigation of them – stemming from serious flaws in the criminal justice system;
2. The insidious impact of organized crime – particularly the drug trade – on the justice system, the rule of law, and respect for human rights;
3. The need for serious reform of Mexican police and judicial institutions.

I would like to address each of these issues in more detail with you.

## **Mexico's Flawed Justice System**

### ***The Roots of Impunity***

Impunity continues to be a serious problem in Mexico, for common crimes and human rights abuse alike. The flaws and weaknesses of Mexico's criminal justice system that lead to such impunity are rooted in the system's authoritarian history.

In the wake of the Mexican Revolution, the Institutional Revolutionary Party (PRI) kept control of the government for more than 70 years. One-party rule severely crippled Mexico's institutions and justice system, breeding a culture of authoritarianism and impunity. Power was concentrated in the executive branch, with the president exercising near-total control over every aspect of government.

In this context, the Mexican justice system evolved not to establish the rule of law, but to preserve the power of the powerful—from local political bosses all the way to the president.

This situation stunted the creation of professional and effective law enforcement and judicial institutions, fostered serious human rights abuses by the military and the police, and created the perfect environment for corruption to flourish.

Law enforcement agents had little reason to develop the technical skills needed to conduct professional investigations based on solid evidence. When called on to solve crimes, they too often resorted to threats or torture to force confessions from suspects or convenient scapegoats. This option was especially attractive when police had little desire to find, or were discouraged from finding, the real criminals – in other words, when the criminals were their associates or local business and political elites.

Complicating matters further, Mexico's criminal justice system actually provides incentives for human rights abuses like illegal detention and torture. This is because, among other flaws in the system, defendants are presumed guilty until proven innocent, trials consist of a series of meetings (that not even the judge attends) where evidence is presented in written form, confessions are often the only evidence, and the accused are not guaranteed access to legal counsel. Once a confession is obtained, it is almost impossible to invalidate it, even if a defendant can prove he or she was tortured. The judicial branch's lack of independence leaves judges vulnerable to pressure to convict based on tainted confessions or to allow the wealthy and well connected to evade justice. Police and prosecutors who engage in abusive tactics are rarely punished for it, propelling the cycle of abuse and impunity.

### ***The Credibility Gap***

Because of the widespread impunity generated by the criminal justice system's flaws, law enforcement and judicial institutions suffer from an enormous credibility gap.

Most crimes – as many as 88 percent, according to the Citizen's Institute for the Study of Insecurity – are not even reported to the police, because the victims have no faith that they will be seriously investigated.

When crimes, usually high-profile ones, do result in investigations – such as the murders of Cardinal Posadas in 1993, of presidential candidate Luis Donaldo Colosio in 1994, or of human rights attorney Digna Ochoa in 2001 – there are so many questions about the validity of the evidence and the methods by which that evidence was obtained that the victims' friends and family members, as well as society at large, are never able to fully trust the official version of events.

This is true even in cases where the alleged perpetrators are behind bars. For example, with respect to the murders of hundreds of women in Ciudad Juárez and Chihuahua since 1993, the local authorities claim that 177 investigations have resulted in convictions. Yet the way the investigations were handled – crime scenes were not preserved, witnesses were not interviewed, forensic tests were shoddy, DNA tests to identify the victims were inconclusive and

contradictory, families were harassed and threatened – has made it impossible for the families to believe them. In some of those cases, law enforcement and judicial agents exacerbated the problem by detaining and torturing scapegoats while letting the real killers go free. Meanwhile, families and society see no progress in the investigations into the substantial number of cases that have not, even according to the authorities, been resolved.

The pain and uncertainty caused by impunity doesn't disappear over time. It remains an open sore, and victims and their families will continue to clamor for truth and justice. This is the lesson from Mexico's most egregious human rights violations – such as the forced disappearances of hundreds of leftist dissidents during the so-called “dirty war” of the 1970s and 1980s. Families would not rest in their efforts to uncover the truth about these events and seek justice for their missing and murdered loved ones, prompting President Fox to appoint a special prosecutor to investigate these 30-year-old crimes.

However, the Mexican government has a poor track record when it comes to special prosecutors. In fact, the term “special prosecutor” has almost become a code word for “we'll never know.” The Mexican authorities, at the federal and state levels, tend to create special prosecutors for difficult, high-profile cases. They promise a lot and deliver little, except for added frustration with the inability of the justice system to solve and prosecute crimes. Cases that get sent to the special prosecutor are often condemned to unsatisfactory conclusion or no conclusion at all. It almost seems like a delaying tactic until the statute of limitations runs out.

For example, the special prosecutor for the Cardinal Posadas killing came to conclusions that continue to be doubted today, prompting inquiries by the Mexican legislature and this subcommittee. The federal attorney general's office conceded that errors were made in the investigation, but continues to insist that their conclusions were correct.

Why should the public believe that these errors did not lead to false conclusions? Their doubts are understandable; in fact, these kinds of doubts are all too common.

That lack of credibility has been borne out by many other special prosecutors' offices in Mexico. There is general rejection of the theory that human rights attorney Digna Ochoa shot herself first in the thigh and then in the head, as the special prosecutor for that case concluded. Similarly, despite the creation of the special prosecutor for the “dirty war,” no official has been held accountable for the massacres or disappearances during that repressive campaign. The federal special prosecutor for the Ciudad Juárez murders issued several reports during her tenure but did not actually investigate or prosecute a single case, nor did her explanations of the Juárez murders differ greatly from those offered by discredited local authorities.

Sadly, because of the government's poor handling of these investigations, all criminal investigations are in doubt. Even if the authorities conduct the most scientific and professional investigation possible, is hard for the public to overcome their doubts about the outcome.

## **The Impact of Organized Crime on Human Rights and the Rule of Law**

Compounding this problem is the insidious impact of the drug trade on Mexico's police and judicial institutions. Corruption is a major problem in Mexico, leading to even less certainty about the trustworthiness of the justice system.

Thriving criminal organizations, which must undermine law enforcement and judicial institutions in order to avoid accountability for their crimes, severely compromise the government's ability to promote and protect human rights and the rule of law.

We have come to see this clearly in our work around the brutal murders of women in Ciudad Juárez, where we believe that impunity for the murders is a consequence of the drug trade.

The links between police and drug traffickers in Juárez are exposed with such regularity that they fail to shock. When twelve men's bodies were unearthed in January 2004 from the backyard of a middle-class home, no one was surprised to find out that the assassins were a group of policemen working for the Juárez cartel. Shortly after, then-attorney general Jesús José Solís Silva resigned amid accusations that he was protecting traffickers.

We do not know who is responsible for the women's murders, but we believe that impunity for the murders can largely be attributed to widespread corruption caused by the thriving drug trade. Drug trafficking has so thoroughly corroded police and judicial institutions that instead of investigating the women's murders, the authorities look the other way.

The case that most exemplifies this relationship between organized crime and impunity is the murky investigation into the murders of eight women whose bodies were found together in a lot in downtown Juárez in early November 2001. Almost immediately, the police arrested two bus drivers and claimed they had spontaneously confessed to the killings. As soon as they were brought before a judge, the men argued they were innocent and had been tortured into confessing to the crimes. Two lawyers mounted a strong defense, taking every opportunity to publicly denounce the torture their clients suffered. In February 2002, one of the lawyers was gunned down by police – the same police implicated in his client's detention and torture – but the murder was never seriously investigated; a judge exonerated the police, arguing they had acted in self defense. One of the bus drivers died under questionable circumstances in prison. And earlier this year, the remaining lawyer was ambushed and killed by unknown men in Juárez.

In other words, the two lawyers most likely to link Juárez police to the murders of women, or at the very least to their cover up, ended up dead – one at the hands of the police themselves.

One of the rare accomplishments of the special prosecutor for the Juárez murders was the compiling of a list of 170 state justice officials who she believed to be administratively or criminally negligent in their handling of the investigations. In one of her reports, she described a situation of “notorious inactivity and negligence ... that led to the loss of evidence and inadequate protection of crime scenes” and forensic tests that were “riddled with grave problems of validity and trustworthiness.”<sup>i</sup> She described these officials' conduct as “incorrect, negligent, or outright omissive” and noted that “as a result of these serious deficiencies ..., some of the homicide

investigations will be practically impossible to solve.”<sup>ii</sup> She urged the local authorities to punish these officials because “due precisely to [their] negligent or omissive attitude, it will be extremely difficult to capture the killers...”<sup>iii</sup>

This sad state of affairs is not the result of mere incompetence. It is the result of organized crime’s corrosion of the state’s law enforcement and judicial institutions. Horrific murders go unpunished, their killers go free, and the very people whose job it is to bring them to justice are instead protecting them.

## **The Need for Reform**

Although the PRI’s “perfect dictatorship” ended with the election of Vicente Fox in July 2000, the inherent flaws and weaknesses of Mexico’s criminal justice system are proving difficult to overcome, despite some reform efforts at the federal and state levels.

The road to reform is a long and difficult one. The Fox administration proposed some important changes to the justice system, but those have floundered in Congress. Some of Mexico’s 31 states are engaged in justice reform efforts, which are at varying levels of implementation.

The U.S. government can play an important role in encouraging and assisting justice reform efforts in Mexico, and USAID has been engaged in this work in several states. However, these programs are at risk because Congress has prohibited Economic Support Funds (ESF) for Mexico and other governments that do not sign Article 98 agreements with the United States. While USAID is reprogramming these funds for Mexican NGOs, this particular kind of grant was intended to help strengthen government institutions and its impact will be greatly reduced if they cannot be direct beneficiaries.

Respect for human rights and due process should be a central component of any U.S. support for justice reform efforts in Mexico. So should an emphasis on accountability for justice officials who have been implicated in human rights abuse.

The U.S. policy emphasis continues to be largely on training police in ethics and investigative techniques. These are undeniably important values and skills, but their impact will not be felt unless the justice system and institutions themselves are fundamentally changed. Well trained police that enter a corrupt agency will find it hard to employ their skills for the public good, if the messages they are receiving from their colleagues and superiors are telling them to do exactly the opposite, and if no one gets held accountable for corruption or abuse. The U.S. government should encourage broad-based police and justice reform – particularly by making the police and attorney general’s office more transparent and accountable – in addition to efforts to impart specialized skills.

Impunity and lack of credibility in the justice system are serious problems in Mexico, but we shouldn’t leave here today with the impression that nothing can be done. Helping Mexico overcome these problems is possible, and it is worth the investment. Doing so will be immensely beneficial to the people of Mexico as well as to the United States.

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<sup>i</sup> Procuraduría General de la República, Suprocuraduría de Derechos Humanos, Atención a Víctimas y Servicios a la Comunidad, “Palabras de la Licenciada María López Urbina, Fiscal Especial, Fiscalía Especial para la Atención de Delitos Relacionados con los Homicidios de Mujeres en el Municipio de Juárez, Chihuahua,” 3 June 2004.

<sup>ii</sup> Ibid, p. 26.

<sup>iii</sup> Ibid, p 76-77.